followed in *The London*[12]. On the question as to the proper procedure in cases of double procedure the most valuable authority is *McHenry v. Lewis*[13]. The question was reviewed with great care and the decision has not since been queried. The majority of the Judges in *The Christiansborg* professed to apply it. It clearly establishes that the normal procedure is to put the plaintiff to election. Jessel, M.R. spoke of "the practice of the old Court of Chancery, which always put a plaintiff to his election by an order of course if he was suing for the same cause of action both at law and in equity".

Historically the matter is interesting. The Courts of Common Law disclaimed any jurisdiction in the matter (see *Cox v. Mitchell*[14]). The Admiralty did exercise such jurisdiction (*The Male Ivo*[15] and cases there cited) as did the ecclesiastical Courts (*Walsh v. Bishop of Lincoln*[16]). The Courts of Equity did exercise such jurisdiction (*Wedderburn v. Wedderburn*[17], also *Ortell v. Lepage*[18]) but only after considerable hesitation. See *Foster v. Vassall*[19]. The Courts of Equity seem to have followed by analogy in suitable cases the procedure adopted in cases where proceedings had been taken in two Courts within the jurisdiction. Now all Courts will follow the procedure of Court of Equity.

The expression "forum conveniens" is not a term of art in English law. There is no English doctrine which restricts the suitor in the choice of jurisdiction. The general rule still is where a Court has jurisdiction it cannot refuse to exercise it; *Ewing v. Orr Ewing* (*supra*).

In *The Christiansborg,* Baggalley, L.J. clearly treated election as the normal course and the bailing of the ship abroad as a special reason why that course should not be followed in that particular case. Fry, L.J. reasoned on similar lines.

The conclusion from the cases is that a stay will only be ordered in special circumstances such as, in my opinion, do not exist in the present case. The manner in which I think that I should exercise my discretion both on the summons and on the motion is in permitting the continuance of these proceedings on the undertaking by the plaintiff to discontinue the London proceedings.

Order Accordingly.

VINCENT LEE v. REX.

[App. Crim. Juris. (Murray-Aynsley C. J.)
November 30, 1949]

[Singapore — Magistrate's Appeal No. 123 of 1949]

Penal Code Ss. 44, 383 and 384 — Extortion — Meaning of injury.

In this case the appellant, a volunteer special constable, was charged and convicted under S. 384 of the Penal Code. It was alleged that the appellant had, to extract money, threatened various persons who were smoking chandu with arrest.

Held, that a threat to exercise the legal powers of a person against another does not constitute putting that other person in fear of "injury" within the meaning of S. 44 of the Penal Code and therefore the appellant in this case should not have been convicted of extortion.

MAGISTRATE'S APPEAL.

C. H. Koh for the Appellant.

A. H. Simpson for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant was charged and convicted under section 384 of the Penal Code. It appears that the appellant was what is known as a volunteer special constable and was duly vested with all the powers and privileges of a "Police Officer". It also appears that in spite of this he had never performed any duties as such. It is also alleged that armed with these powers he had to extract money, threatened various persons who were smoking chandu with arrest.

The offence of extortion is defined in section 383 of the Penal Code. It will be seen that an essential part of the offence is putting a person in fear of "injury". In turn "injury" is defined in section 44 of the same code. There "injury" is harm illegally caused. It appears to me to follow from this that the exercise of legal powers however done can never constitute harm.

It is to be regretted that the use of the word "extortion" in this connection, which is very different from the technical use in English law and also from the popular use, has led to confusion. It will be seen that the authorities cited in the commentary both in Gour and Ratanlal are mostly English cases and they are examples of offences very different from that defined in the section. If the appellant is guilty of an offence, it is not that of which he has been convicted.

The appeal must be allowed and the conviction and the consequential order must be quashed.

Appeal Allowed.